

IN THE TEXAS COURT OF CRIMINAL APPEALS

BURT LEE BURNETT

§

FILED
COURT OF CRIMINAL APPEALS
11/29/2016
ABEL ACOSTA, CLERK

v.

§

CAUSE NO. PD-0576-16

§

THE STATE OF TEXAS

§

UNOPPOSED MOTION TO EXTEND TIME TO FILE BRIEF

TO THE HONORABLE JUDGES OF THE COURT OF CRIMINAL APPEALS:

Comes now BURT LEE BURNETT, Appellant, pursuant to TEX. R. APP. P. 10.5(b)¹, and files this *Unopposed Motion to Extend Time to File Brief* asking the Court to grant him until December 30, 2016 to file his brief. In support of this motion, Appellant shows the Court the following:

- 1. *Deadline for Filing the Item in Question:*** Appellant's brief is due November 30, 2016.
- 2. *Length of Extension Sought:*** Appellant requests a 30-day extension.
- 3. *Facts Relied on to Explain Need for Extension:***

¹ See also *Houser v. McElveen*, 243 S.W.3d 646, 647 (Tex. 2008) (emphasis added) (explaining that extension of time should be granted if "any plausible statement of circumstances indicating that failure to file within the [specified] period was not deliberate or intentional, but was the result of inadvertence, mistake, or mischance.").

Undersigned counsel is in the process of opening a law firm and moving from Lubbock to Fort Worth. This has taken more time than originally anticipated, but the move is nearly complete. In addition to moving, in the previous 30 days, counsel for Appellant:

- a. Worked on a memorandum in support of a federal writ of habeas corpus, which will be filed later this week, in *Lowrey v. Davis*, No. 6:16-CV-058-C (N.D. Tex. — Lubbock Division).
- b. Worked on a brief due in the Austin Court of Appeals, which will be filed as soon as the full record has been provided to counsel and the Austin Court, in *Riordan v. State*, No. 03-16-00297-CR (Tex. App.—Austin).
- c. Presented at the Texas Criminal Defense Lawyer's Project Beating the Drum for Justice Seminar in Laredo, Texas, on October 28, 2016.
- d. Attended and presented at the Texas Criminal Defense Lawyer's Association's Stu Kinard Advanced DWI Defense Seminar in San Antonio, Texas on November 3, 2016.
- e. Closed his office on November 11, 2016 for Veteran's Day.

- f. Represented Defendant charged with DWI in a contested suppression hearing in *State of Texas v. Hayden Hansell*; Cause No. 2016-486,288; In the County Court at Law #1 of Lubbock County, Texas.
- g. Represented Defendant charged with Aggravated Assault with a Deadly Weapon on a Peace Officer in a contested suppression hearing in *State of Texas v. Jesse Tello*; Cause No. 2015-406,301; In the 137th District Court of Lubbock County, Texas.
- h. Closed his office from November 23 - 25, 2016, to travel to visit family for the Thanksgiving Holiday.
- i. Prepared for a four-day DWI jury trial beginning November 29, 2016 in *State of Texas v. Christopher Richey*; Cause No. 14-478,383; In the County Court at Law #2 of Lubbock County, Texas.

In order to provide effective assistance of counsel and comply with disciplinary rules, defense counsel must be adequately prepared for each hearing on each case, as well as for every trial.²

² See TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.01(b)(1) ("In representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer.").

4. Number of Previous Extensions Granted Regarding Item in Question:

Appellant has not requested any previous extensions to file this document.

II.

Should the Court deny this Motion, Appellant will be denied both his state and federal rights to the effective assistance of counsel and due process of law.

WHEREFORE, Appellant prays the Court extend the deadline to file his brief until December 30, 2016.

Respectfully submitted,

/s/ Frank Sellers

Frank Sellers

Texas Bar No. 24080305

4200 West Vickey Blvd., Second Floor

Fort Worth, Texas 76107

P: 817.928.4222

F: (817) 385-6715

E: Frank@hurleyguinn.com

Counsel for Burt Lee Burnett

Certificate of Conference

I certify that I have conferred with opposing counsel, Britt Lindsey, who does not oppose the Court granting this motion.

/s/ Frank Sellers
Frank Sellers

Certificate of Service

I hereby certify that on November 28, 2016, a true and correct copy of the foregoing was served on all counsel of record via the electronic case filing service provider contemporaneous with electronic filing.

/s/ Frank Sellers
Frank Sellers